ESTTA Tracking number: **ESTTA755769**

Filing date: **06/30/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91222999
Party	Defendant Videokall Inc.
Correspondence Address	VIDEOKALL INC 10631 BARN WOOD LN POTOMAC, MD 20854-1325 UNITED STATES cnahabed@gmail.com
Submission	Other Motions/Papers
Filer's Name	Charles Nahabedian
Filer's e-mail	c.nahabedian@medexspot.com
Signature	/Charles E Nahabedian/
Date	06/30/2016
Attachments	Applicant Request for Admission from Opposer.pdf(234673 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 86/414,664
Published in the Official Gazette of March 31, 2015

URGENT CARE MSO, LLC, Opposer, v. VIDEOKALL, INC., Applicant.	Opposition No. 91222999

APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSION FROM OPPOSER

Pursuant to Rule 36 of the Federal Rules Of Civil Procedure, Applicant Videokall, Inc hereby requests that Opposer, Urgent Care MSO, LLC admit, for purposes of the pending action only, the truth of the following statements or opinions of fact, or of the application of law to fact.

Any matter of which an admission is requested is deemed admitted unless Applicant serves a written response thereto within 30 days of the date of service of these Requests.

DEFINITIONS

For purposes of these Requests:

1. "Opposer" means the Opposer in this proceeding, Urgent Care MSO, LLC.

2. "Applicant" means the Applicant in this proceeding, Videokall, Inc.

3. "Opposed Application" means Application Serial No. 86/414,664, the application at issue in this proceeding.

4. "Applicant's Mark" means the mark shown in the Opposed Application.

5. "Opposer's Marks" refers to the following marks collectively: MED EXPRESS (U.S. Reg. No. 3,311,726); MED EXPRESS CORPORATE CARE (U.S. Reg. No. 3,205,430); MED EXPRESS & Design (U.S. Reg. No. 3,519,373); MED EXPRESS & Design (U.S. Reg. No. 3,733,948); and ME MED EXPRESS & Design (U.S. Reg. No. 4,417,150).

REQUESTS FOR ADMISSION

REQUEST NO. 1:

When Opposer opposed Applicant's trademark application it was unaware that the Applicant had published on YouTube and Google on February 21, 2012 a video which prominently displayed the MEDEX SPOT name and could easily be found on a Google search.

REQUEST NO. 2:

When Opposer opposed Applicant's trademark application it was unaware that in the book, Observations and Innovations, published on Amazon on April 28, 2013, contained a whole chapter of the book dedicated to MEDEX SPOT which was easily discovered on a Google search using the name MEDEX SPOT.

REQUEST NO. 3:

When Opposer opposed Applicant's trademark application it was unaware that a web search in 2012 on Google for just the single word MEDEX displayed the MEDEX SPOT entry within the first 3 pages of the web search.

REQUEST NO. 4:

When Opposer opposed Applicant's trademark application it was unaware that the Applicant had its MEDEX SPOT name prominently displayed on the front cover of the "SatMagazine" in May 2013, promoting an extensive article inside the magazine about MEDEX SPOT, which was easily found on a Google search for the term MEDEX SPOT.

REQUEST NO. 5:

When Opposer opposed Applicant's trademark application, is it aware that it had failed to identify the existence of the use of the mark MEDEX SPOT in the public domain between February 21, 2012 and September 16, 2014 prior to the Opposer reading an article about MEDEX SPOT in Beckers Hospital Review on September 17, 2014.

[Note: this is further evidence that from a computer device located at IP address 198.49.90.2 by clicking on the link in the article http://www.beckershospitalreview.com/leadership-management/are-micro-clinics-the-future-of-healthcare-delivery.html at 09.33 PT, which took the Opposer's search to MEDEX SPOT web site at http://www.medexspot.com where the Opposer was able to view a video about MEDEX SPOT.]

REQUEST NO. 6:

When Opposer opposed Applicant's trademark application, it was aware that in a Google search of the name MED EXPRESS, many other companies with similar names including Buddies MEDEX PRESS which sells Marijuana were also listed in the search, but MEDEX SPOT name did not appear in the search and therefore the name MEDEX SPOT could not have been confused with MED EXPRESS.

REQUEST NO. 7:

When Opposer opposed Applicant's trademark application, it was aware that MED EXPRESS was absent in the USPTO TESS listing for possible conflict with MEDEX SPOT.

REQUEST NO. 8:

When Opposer opposed Applicant's trademark application in March 2015, it was aware that there was no evidence since 2012 to date to support the accusation that the well publicized name MEDEX SPOT was being confused in the marketplace with MED EXPRESS.

REQUEST NO. 9:

When Opposer opposed Applicant's MEDEX SPOT trademark application, the Opposer's opposition to the presence of the mark was only instigated when it became aware on September 17th 2014 that the technology employed by MEDEX SPOT could threaten the business of MED EXPRESS urgent care clinics, and it was the technology not the trademark, which caused the Opposer concern, and the easiest way to prevent MEDEX SPOT from becoming a competitor was to use the unsubstantiated accusation that the two trademarks would confuse the public.

REQUEST NO. 10:

When Opposer opposed Applicant's trademark application, it was aware that the Opposer had previously been successful is getting the USPTO to agree to the granting of the MED EXPRESS name when it challenged the opposition of the non-profit company MED EXPRESS, which already owned the trademark.

REQUEST NO. 11:

When Opposer opposed Applicant's trademark application, it was aware that there is a difference between a 5 ft. x6 ft. cabin [floor space] medical cabin and a 2000 sq ft urgent care clinic.

REQUEST NO. 12:

When Opposer opposed Applicant's trademark application, it was aware that there is a difference between locally provided services in an urgent care clinic and a hospital-based telehealth service.

REQUEST NO. 13:

When Opposer opposed Applicant's trademark application, it was aware that there is a difference between a walk-in dedicated store-front or free-standing urgent care clinic and a cabin located within a larger retail facility.

REQUEST NO. 14:

When Opposer opposed Applicant's trademark application, it was aware that there is a difference between an emergency room and an urgent care center.

REQUEST NO. 15:

When Opposer opposed Applicant's trademark application, it was aware that there is a difference between an urgent care center and a retail mini-clinic.

REQUEST NO. 16:

When Opposer opposed Applicant's trademark application, it was aware that there is a difference between a retail mini-clinic and a telehealth cabin.

REQUEST NO. 17:

When Opposer opposed Applicant's trademark application, it was aware that there is a difference between an urgent care center and a telehealth cabin.

REQUEST NO. 18:

When Opposer opposed Applicant's trademark application, it was aware that there is a difference between an urgent care center that is manned and a telehealth cabin which is unmanned.

REQUEST NO. 19:

When Opposer opposed Applicant's trademark application, it was aware that its marketing is different from a retail store publicizing an unmanned telehealth cabin for limited services on a co-branded basis with leading medical institutions from an urgent care center with medical staff and equipment present on its premises to provide in-person medical care.

REQUEST NO. 20:

When Opposer opposed Applicant's trademark application, it was aware that it is comparing an urgent care center with full medical staff and complementary expensive medical equipment and services to the Applicant's unmanned integrated hardware, software and telecomm service infrastructure which enables a medical provider to extend limited medical services to patients in the vicinity of a telehealth cabin.

REQUEST NO. 21:

When Opposer opposed Applicant's trademark application, it was aware that it is offering a full medical service, positioned between that of a physician and an emergency room, compared to Applicant that will support a telehealth medical care service provided by a hospital.

REQUEST NO. 22:

When Opposer opposed Applicant's trademark application, it was aware that its customer base is different from the Applicant service because the Applicant service has no medical staff present and therefore the Applicant cannot provide services requiring medical staff for hands-on diagnosis, dress wounds, x-rays, and injections.

REQUEST NO. 23:

When Opposer opposed Applicant's trademark application, it was aware that Applicant will provide self-service devices for patients, whereas the majority of devices and symptoms at its urgent care centers are administered by medical staff.

REQUEST NO. 24:

When Opposer opposed Applicant's trademark application, it was aware that Applicant will offer interaction with a medical person through a telecommunications link with no hands-on service by the medical staff, compared to hands-on capabilities by the Opposer urgent care centers.

REQUEST NO. 25:

When Opposer opposed Applicant's trademark application, it was aware that "med" means "medical" (circa 1933) according to Meriam Webster, and that "MEDEX" isn't in the dictionary.

REQUEST NO. 26:

When Opposer opposed Applicant's trademark application, is was aware that "Express" means "said or given in a clear way" according to Meriam Webster, and that "Spot" means "a small area of a surface that is different from other areas" by the same dictionary.

REQUEST NO. 27:

When Opposer opposed Applicant's trademark application, it was aware that the only confusion is in its own organization and that the Miriam Webster dictionary, the public, and hospitals see no confusion at all between the MEDEX SPOT and MED EXPRESS.

Date: June 30, 2016

Regards,

Charles E. Nahabedian
CEO, Medex Spot
P.O. Box 60841
Potomac, MD 20859
B: 805 -233 -7844
C: 201 -704 - 0730
www.medexspot.com
c.nahabedian@medexspot.com

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2016, I served the foregoing "APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSION FROM OPPOSER" by depositing a true copy thereof in a sealed envelope, postage prepaid, in First Class U.S. mail addressed as follows:

Ms. Lauren M. Gregory
Seyfarth Shaw, LLP.
1075 Peachtree Street, N.E.
Suite 2500
Atlanta, GA 30309-3958